

Assuming -quod non- that the mere 'possibility of exercising decisive influence' amounts to an 'implementation' of a concentration, Article 3(2) EUMR requires a change of control on a lasting basis resulting from means which confer 'veto rights over strategic business decisions', i.e., 'the power to block' the strategic behaviour of an undertaking. The Judgment under appeal erred in law by extending the notion of 'veto rights' to situations which do not confer the power to block strategic decisions. Alternatively, the Judgment under appeal distorted the SPA by interpreting its pre-closing covenants as conferring 'veto rights' on Altice.

Fifth Ground: The General Court erred in law in concluding that exchanges of information amount to an 'implementation' of a concentration within the meaning of Articles 4(1) and 7(1) EUMR

The Judgment under appeal erred in law in considering that exchanges of information in the context of a concentration fall under Articles 4(1) and 7(1) EUMR, whereas Article 101 TFEU and Regulation (EC) 1/2003<sup>(2)</sup> presuppose an ex-post mechanism. This is inconsistent with the judgment in case C-633/16 and would reduce the scope of Regulation (EC) 1/2003. The Judgment under appeal also distorts the Contested Decision in finding that it interprets that the exchanges of information did not in themselves infringe Articles 4(1) and 7(1) EUMR but merely 'contributed' to demonstrate the infringement.

Sixth: The General Court erred in law in rejecting Altice's pleas of illegality and lack of proportionality of the fines

The Judgment under appeal erred in law in considering that Altice was negligent. Furthermore, the level of the fines resulting from the Judgment under appeal is not only inappropriate, but also excessive to the point of being disproportionate. The General Court therefore erred in law by not substantially reducing the amount of the fines in exercise of its unlimited jurisdiction.

(<sup>1</sup>) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004, L 24, p. 1).

(<sup>2</sup>) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003, L 1, p. 1).

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**Appeal brought on 8 December 2021 by the European Parliament against the judgment of the General Court (Eighth Chamber) delivered on 29 September 2021 in Case T-384/19, Parliament v Axa Assurances Luxembourg SA and Others**

**(Case C-766/21 P)**

(2022/C 119/28)

*Language of the case: French*

**Parties**

*Appellant:* European Parliament (represented by: E. Paladini and B. Schäfer, acting as Agents)

*Other parties to the proceedings:* Axa Assurances Luxembourg SA, Baloise Assurances Luxembourg SA, La Luxembourgeoise SA, Nationale-Nederlanden Schadeverzekering Maatschappij NV

**Form of order sought**

- annul the second and fourth paragraphs of the operative part of the judgment under appeal;
- refer the case back to the General Court;
- reserve costs, with the exception of those which are subject to the third paragraph of the operative part of the judgment under appeal.

In the alternative,

- annul the second and fourth paragraphs of the operative part of the judgment under appeal;
- grant the form of order sought by the European Parliament at first instance in respect of Axa Assurances Luxembourg SA, Baloise Assurances Luxembourg SA and La Luxembourgeoise SA.

### Grounds of appeal and main arguments

In support of its appeal, the European Parliament raises three grounds of appeal.

The first ground of appeal alleges an error of law consisting in the infringement of the principles of interpretation of EU law. The Parliament considers that the General Court disregarded, in particular, the rule of interpretation consisting in taking account of the purpose of the contract and the context in which its terms, and more specifically the term ‘flooding’, appear. In the alternative, the Parliament takes the view that the General Court distorted the exclusion clause relating to flooding.

The second ground of appeal alleges an error relating to reasoning of the judgment under appeal, which is, in the Parliament’s view, vitiated by a contradiction in the reasoning of the General Court on the interpretation of the term ‘flooding’.

Thirdly, the Parliament considers that the judgment under appeal contains several distortions of the facts and evidence: the General Court distorted the Parliament’s position on the interpretation of the term ‘flooding’; it assessed the situation of the building site at the time of the damage in a manifestly erroneous manner, and also distorted the findings of the expert report on the causes of the damage.

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**Appeal brought on 14 December 2021 by the European Commission against the judgment of the  
General Court (Ninth Chamber, Extended Composition) delivered on 29 September 2021 in Joined  
Cases T-344/19 and T-356/19, Front Polisario v Council**

(Case C-778/21 P)

(2022/C 119/29)

*Language of the case: French*

### Parties

*Appellant:* European Commission (represented by: A. Bouquet, F. Castillo de la Torre, A. Stobiecka-Kuik, acting as Agents)

*Other parties to the proceedings:* Front populaire pour la libération de la Saguia el-Hamra et du Rio de oro (Front Polisario), Council of the European Union, Kingdom of Spain, French Republic, Chambre des pêches maritimes de la Méditerranée, Chambre des pêches maritimes de l’Atlantique Nord, Chambre des pêches maritimes de l’Atlantique Centre, Chambre des pêches maritimes de l’Atlantique Sud

### Form of order sought

The appellant claims that the Court should:

- set aside paragraphs 1 and 2 of the operative part of the judgment under appeal and consequently;
- dismiss the action brought at first instance by the Front Polisario, or, if the state of proceedings does not permit the Court of Justice to give final judgment in the matter, refer the case back to the General Court;
- order the Front Polisario to pay the costs of both sets of proceedings in their entirety.

### Grounds of appeal and main arguments

- First ground of appeal: errors in law based on the Front Polisario’s lack of capacity to be a party to legal proceedings.
- Second ground of appeal: errors in law based on the Front Polisario’s lack of direct concern.
- Third ground of appeal: errors in law based on the Front Polisario’s lack of individual concern.
- Fourth ground of appeal: errors in law regarding the scope of judicial review, the institutions’ margin of appreciation and the need to find that there had been a manifest error; regarding the consent of the people of Western Sahara not being a requirement; regarding the fact that the concept of consent adopted is too strict and theoretical, that the consultation that obtained the favourable opinion is considered insufficient and that the examination of the benefits is rejected; regarding the Front Polisario’s identification as the entity that would be responsible for giving such consent, given its limited status and representativeness.